

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 864 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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KACHIA SAVITABEN WD/O RANCHHODBHAI PUNJABHAI

Versus

THAKKAR DAHYABHAI NARANBHAI  
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Appearance:

MR MI PATEL for Petitioners

MR TRILOK J PATEL FOR MR JM PATEL for Respondent No. 1  
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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 11/04/2000

ORAL JUDGEMENT

1. The original petitioner - Kachia Ranchhodbhai Punjabhai has died during the pendency of this civil revision application and his heirs are already brought on the record. The respondent herein is the original

landlord who had instituted the suit being Regular Civil Suit No.281/78 in the court of Civil Judge (Junior Division) at Padra. The case of the plaintiff in the said suit was that, he is the owner of the premises bearing Tikka No.8/1, Survey No.51 situated at Navapura, Hanuman Falia, Padra. That the defendant is the tenant on the ground floor of the said premises and that monthly rent is Rs.21/-. According to the plaintiff, the defendant was irregular in payment of the rent and he had not paid the rent for more than six months prior to issuance of the suit notice. The plaintiff, therefore, sent the demand notice as contemplated by Section 12(2) of the Bombay Rent Act and the defendant having failed to comply to pay the same, the aforesaid suit for possession was filed.

2. The defendant appeared in the suit by filing the written statement at Exh.12. He denied the case of the plaintiff for possession on the ground of arrears of rent. The defendant stated that, he is ready and willing to pay the rent and he is not negligent in payment of the rent. He also raised the dispute of the standard rent in the written statement as well as in the reply to the suit notice.

3. Learned trial Judge framed various issues and after recording the evidence of the parties came to the conclusion that the tenant was in arrears of rent and that in view of the dispute of the standard rent, the case falls under section 12(3)(b) of the Bombay Rent Act and that the tenant has not made regular deposit during the pendency of the suit. Therefore, the decree under section 12(3)(b) was passed.

4. The aforesaid decree of the trial court was challenged by the tenant by preferring appeal being Regular Civil Appeal No.180/81. Against the decree of the trial court, there were two appeals before the District Court, one appeal being Regular Civil Appeal No.180/81 filed by the tenant and another appeal being Regular Civil Appeal No.185/83 filed by the landlord. Learned Appellate Judge heard both the appeals together. Learned Appellate Judge dismissed the appeal filed by the defendant - tenant in so far as the decree for eviction is concerned. So far as the landlord's appeal is concerned, that was in connection with the determination of the standard rent at the rate of Rs.15/- per month. Learned Appellate Judge also dismissed the said appeal and accordingly the decree of the trial court passed in Regular Civil Suit No.281/81 was confirmed.

5. The petitioner - tenant has preferred this civil revision application challenging the judgment and decree of the appellate court by which the decree for possession passed by the trial court was confirmed by the appellate court.

6. Mr.M.I.Patel, learned advocate for the petitioner has argued that the demand notice is vague, and therefore, the said notice is bad as there was no proper demand as contemplated by Section 12(2) of the Bombay Rent Act. So far as the demand notice is concerned, it is dated 11.4.1977 which is at Exh.110. In the said notice the landlord has demanded specified amount of rent after adjusting the earlier payment made by the tenant. It is clearly provided in the suit notice that, in all Rs.3068.02 ps. is due from the defendant - tenant towards the arrears of rent. It was specifically stated that the tenant is in arrears of rent for more than six months and adjustment of the earlier payment is given in the said notice by giving proper account. Therefore, it cannot be said that, it was not possible for the tenant to know what was the amount which required to be paid by him towards the arrears of rent. There is a specific demand of quantified amount as per paragraph 3 of the suit notice. In my view, therefore, there is no substance in the aforesaid contention of Mr.M.I.Patel that the suit notice is vague and on the basis of such notice, no suit could have been entertained. The tenant had also given the reply to the said notice wherein he has specifically contended that, Rs.21/- is excessive rent and that the standard rent is required to be fixed. In that view of the matter, when the tenant himself has given detail reply to the said notice, it cannot be said that, it was not possible for him to act upon the said notice or that, it was not possible for him to know exact amount of arrears of rent as per the said notice.

7. It seems that, in 1976 also the demand notice was given by the landlord which followed by the suit being Civil Suit No.331/76. That suit was withdrawn and thereafter fresh notice of demand at Exh.110 was given which is the cause of action for filing the present suit. Since the tenant has raised the dispute of the standard rent within one month, the case would fall under section 12(3)(b) of the Bombay Rent Act and both the courts below have rightly held that, Section 12(3)(b) is applicable. However, in order to get the benefit of section 12(3)(b) of the Bombay Rent Act, the tenant is required to pay the rent regularly every month during the pendency of the suit before the trial court as well as before the appellate court. The scope of section 12(3)(b) is

explained by the Honourable Supreme Court as back as in the case of Ganpat Ladha Vs. Sashikant Vishnu Shinde reported in 19 GLR, 502. It has been specifically stated that, in order to get the benefit of section 12(3)(b) of the Bombay Rent Act, the tenant has to comply with the condition by regularly depositing the rent. In the instant case, even though the interim rent was fixed by the court, the tenant has not deposited the same regularly. The defendant had made the application at Exh.14 and the interim standard rent was fixed at the rate of Rs.15/- per month on 27.6.1979. Learned Appellate Judge has discussed the said point in para 23 of his judgment. Once the interim rent was fixed, it was the duty of the tenant to pay the same regularly every month. It has been specifically found that the tenant has not complied with the said condition and he had not deposited the rent regularly. In that view of the matter, he was not entitled to any protection under section 12(3)(b) of the Bombay Rent Act. Learned Appellate Judge has also discussed the irregularities on the part of the tenant in depositing the rent in para 24 of his judgment. In that view of the matter, it is difficult to say that the reasoning of the appellate court is in any way bad in law.

8. In view of the aforesaid position, I do not find any substance in this civil revision application as the tenant has not complied with the condition of Section 12(3)(b) of the Bombay Rent Act. Therefore, this civil revision application deserves to be dismissed and accordingly the same is dismissed. Rule discharged. Interim relief stands vacated. No order as to costs.

9. At this stage, Mr.M.I.Patel requests for granting three years time to vacate on the ground that the financial condition of the tenant is very bad and that they will have to find out alternative accommodation. It is also prayed that, looking to the facts of this case, longer time is required to be given to the petitioners to vacate the suit premises especially when the landlord is affluent man and he is not going to suffer any difficulty if longer time is given. In the facts and circumstances of this case, I grant two years time to the petitioners to vacate the suit premises. Accordingly the decree for possession shall not be executed till 30.4.2002. The aforesaid time is granted on condition that the petitioners shall file joint undertaking before this court within a period of six weeks from today. In the said undertaking, they should clearly mention that they are in exclusive possession of the suit premises and that they will not part with the possession in any manner and

without obstructing in any manner they will hand over the peaceful and vacant possession to the landlord on or before the aforesaid date. The petitioners shall also pay the means profit regularly till they vacate the suit premises.

(P.B.Majmudar,J.)

(pathan)